



STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING

IN THE MATTER OF THE LICENSE OF	:	Administrative Action
	:	
	:	FINAL ORDER
	:	OF DISCIPLINE
EDWIN CUSTODIO, JR. LPN	:	
License # 26NP05970600	:	
	:	
	:	
TO PRACTICE NURSING IN THE	:	
STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey State Board of Nursing ("Board") upon receipt of information which the Board has reviewed and upon which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Edwin Custodio, Jr. ("Respondent") is a Licensed Practical Nurse (LPN) in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On or about May 19, 2011, Respondent completed and submitted an online biennial renewal application. Respondent

was asked on the biennial renewal application whether Respondent would have "completed the required continuing education credits by May 31, 2011," referring to the biennial renewal period of June 1, 2009 to May 31, 2011. Respondent answered "Yes" and certified that answer by submitting the online application.

3. Upon receipt of information indicating that Respondent was arrested on March 6, 2012, by the members of the New Jersey State Police Intelligence Drug Trafficking Unit South for violations of N.J.S.A. 2C:35-4 (Maintaining Or Operating A Controlled Dangerous Substance Production Facility) and (N.J.S.A. 2C:35-5B(11) (Distribute Marijuana/Hash), the Board sent a letter of inquiry requesting certain information and documents regarding the criminal matter, Respondent's nursing practice, and proof of completion of required continuing education to Respondent's address of record in Vineland, New Jersey, via regular and certified mail on or about March 8, 2012. The regular mailing was not returned. The certified mailing was delivered and signed on March 14, 2012.

4. On March 28, 2012, Respondent's attorney partially responded by providing a copy of the municipal court complaint which indicated that Respondent had 42 marijuana plants growing in his residence and 4 pounds of marijuana for distribution.

5. In April 2012, Respondent's attorney provided an update on the status of the case and indicated that the case was going to be presented to the grand jury for possible indictment. In July 2012, Respondent's attorney advised that there was no update in the status of the criminal case.

6. On or about May 29, 2013, Respondent completed and submitted an online biennial renewal application. Respondent was asked on the biennial renewal application whether Respondent would have "completed the required continuing education credits by May 31, 2013," referring to the biennial renewal period of June 1, 2011 to May 31, 2013. Respondent answered "Yes" and certified that answer by submitting the online application.

7. In April 2015, Respondent's attorney provided an undated, unsigned, invalid Order for Entry into PTI.

8. On or about May 17, 2015, Respondent completed and submitted an online biennial renewal application. Respondent was asked on the biennial renewal application whether Respondent would have "completed the required continuing education credits by May 31, 2015," referring to the biennial renewal period of June 1, 2013 to May 31, 2015. Respondent answered "Yes" and certified that answer by submitting the online application.

9. Respondent has provided no further reply to the Board's requests for information and has failed to provide:

police report with all supporting statements, indictment, criminal accusation, plea agreement, order of entry into PTI with conditions, disposition, sentencing, proof of payment of fines, proof of completion of probation, proof of completion of sentencing, narrative statement from Respondent regarding the conduct which led to his arrest, name and address of nursing employers from March 2012 to present, job titles, dates of employment, shift, type of units worked, copies of performance evaluations, and continuing education from 2009 to the present (including the biennial periods of June 1, 2009 - May, 31, 2011; June 1, 2011 - May, 31, 2013; and June 1, 2013 - May, 31, 2015).

CONCLUSIONS OF LAW

Respondent's protracted failure to fully respond to the Board's request for information constitutes a failure to cooperate with a Board investigation, in contravention of N.J.A.C. 13:45C-1.2 and 1.3, which the Board deems professional misconduct pursuant to N.J.S.A. 45:1-21(e) and also subjects Respondent to disciplinary action pursuant to N.J.S.A. 45:1-21(h).

Pursuant to N.J.A.C. 13:37-5.3(b), nurses are required to complete a minimum of thirty (30) hours of continuing education during the preceding biennial period in order to renew their licenses. Pursuant to N.J.A.C. 13:37-5.3(f), nurses are required

to maintain documentation of completion of continuing education for a period of four years after completion, and shall submit such documentation to the Board upon request.

By virtue of having failed to fully respond to the letter of inquiry, Respondent is deemed to have failed to demonstrate, to the satisfaction of the Board, that Respondent completed the continuing education credits required for renewal during the biennial period of June 1, 2009 to May 31, 2011 and onward. The Board therefore finds Respondent in violation of N.J.A.C. 13:37-5.3(b) and 13:37-5.3(f), which in turn subjects Respondent to sanctions pursuant to N.J.S.A. 45:1-21(e) and (h).

Respondent's use of dishonesty and misrepresentation during the license renewal process in falsifying his continuing education information constitutes a violation of N.J.S.A. 45:1-21(b), subjecting Respondent to sanctions.

Lastly, Respondent's drug related arrest raises sufficient concern such that testing, monitoring, evaluation, and treatment are warranted, as a condition for continued or reinstated licensure, to evaluate whether Respondent's continued practice as a nurse may jeopardize the safety and welfare of the public pursuant to N.J.S.A. 45:1-22(f) and to ensure that Respondent can properly discharge nursing functions pursuant to N.J.S.A. 45:1-22(e).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on December 15, 2015, provisionally suspending respondent's nursing license, requiring respondent to undergo evaluation and monitoring under the auspices of the Recovery and Monitoring Program of New Jersey (RAMP), and imposing a reprimand and civil penalties in the total amount of \$750. A copy of the Order was served upon respondent by certified and regular mail at his address of record. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Mr. Custodio replied to the Provisional Order, providing most of the information and documentation requested in the Board's original inquiry. With respect to continuing education, Mr. Custodio provided documentation of completion of ninety (90) hours of continuing education completed during the 2013-2015 licensing cycle, which includes sufficient hours to cure his

deficiency for the 2011-2013 licensing cycle. Therefore the Board found that suspension was no longer applicable, as Mr. Custodio had substantially complied with the Board's request for information, and had satisfied his continuing education obligation, albeit belatedly with respect to the 2011-2013 cycle. However, the Board found that the reprimand and the \$250 civil penalty based upon misrepresentation on the 2013 renewal application with respect to continuing education, and respondent's belated compliance with N.J.A.C. 13:37-5.3 for the 2011-2013 cycle, were warranted. With respect to the \$500 civil penalty for failure to cooperate in violation of N.J.A.C. 13:45C-1.2, -1.3, the Order for Entry into PTI provided in response to the Provisional Order was entered on January 13, 2014, yet it was not provided to the Board until after the issuance of the Provisional Order. This failure to keep the Board abreast of developments in the criminal case led to unnecessary delay and a waste of the State's resources, in that it was necessary for an order to be issued to obtain important information with regard to the disposition of this matter.

Finally, although respondent attributes any misconduct in this matter to his brother-in-law, who was residing in his home, the fact that there was marijuana in his home, and he was charged with cultivating forty two (42) marijuana plants within

his residence, the Board finds that a comprehensive mental health and substance abuse evaluation is certainly warranted pursuant to N.J.S.A. 45:1-22(f).

ACCORDINGLY, IT IS on this 10th day of February, 2016,
ORDERED that:

1. Respondent shall contact RAMP and begin undergoing the comprehensive evaluation within 30 days of the filing of this order, if not sooner.

2. By undergoing evaluation, Respondent expressly waives any claim of privilege or confidentiality that he may have concerning RAMP reports and disclosures to the Board, and use by the Board of that information in any proceedings.

3. All costs associated with the evaluation, monitoring, and/or treatment outlined above shall be the responsibility of, and paid directly by, Respondent.

4. A reprimand is imposed on Respondent for falsifying the continuing education information on his license renewal application.

5. Respondent is assessed a civil penalty in the amount of seven hundred and fifty dollars (\$750). Said penalty is an aggregate penalty, which includes a penalty in the amount of five hundred dollars (\$500) for failure to cooperate with a

Board investigation and a penalty in the amount of two hundred and fifty dollars (\$250) for failing to timely complete required continuing education. Payment shall be made by certified check, bank cashier check, or money order payable to "State of New Jersey," or by wire transfer, direct deposit, or credit card payment delivered or mailed to State Board of Nursing, Attention: Leslie Burgos, 124 Halsey Street, Sixth Floor, P.O. Box 45010, Newark, New Jersey 07101. Any other form of payment will be rejected and will be returned to the party making the payment. Payment shall be made no later than fifteen (15) days after the date of filing of this order. In the event Respondent fails to make a timely payment, a certificate of debt shall be filed in accordance with N.J.S.A. 45:1-24 and the Board may bring such other proceedings as authorized by law.

6. The Board reserves the right to initiate disciplinary proceedings based upon any information that Respondent ultimately provides in response to the letter of inquiry or upon any new information the Board receives, including the results of the comprehensive mental health and substance abuse evaluation.

NEW JERSEY STATE BOARD OF NURSING

By: Patricia Murphy PhD APN
Patricia Murphy, PhD, APN
Board President